

IV. PROCEDURAL MATTERS

A. Regulatory Flexibility Analysis

113. As required by the RFA,³⁴¹ the Commission has prepared a Final Regulatory Flexibility Analysis ("FRFA") relating to this *Second Report and Order*. The FRFA is attached to this *Second Report and Order* as Appendix B.

B. Paperwork Reduction Act Analysis

114. This document contains proposed information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995.³⁴² The Commission previously sought comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 or fewer employees.

V. ORDERING CLAUSES

115. Accordingly, **IT IS ORDERED** that, pursuant to the authority contained in sections 1, 2, 4(i), 303, 307, and 315 of the Communications Act, 47 U.S.C §§ 151, 152, 154(i), 303, 307, 315, this *Second Report and Order* is **ADOPTED**.

116. **IT IS FURTHER ORDERED** that the requirement that stations place their new public inspection file documents on the Commission-hosted online public file **SHALL BE EFFECTIVE** 30 days after the Commission publishes a notice in the Federal Register announcing OMB approval. Stations will be responsible for placing existing public file documents into the Commission-hosted online public file, with the exception of letters and emails from the public and the existing political file, as required by this *Second Report and Order*, within six months after the Commission publishes a notice in the Federal Register announcing OMB approval. Until July 1, 2014, stations not in the top 50 DMAs and all stations not affiliated with the top four networks, regardless of the size of the market they serve, are exempt from the requirement, under 47 C.F.R. §§ 73.3526(b)(3) and 73.3527(b)(3), of filing their political file online.

117. **IT IS FURTHER ORDERED** that the proceeding in MM Docket No. 00-44 is terminated.

³⁴¹ See 5 U.S.C. § 603.

³⁴² Pub. L. No. 104-13. The Commission previously sought comment on these proposals. See 76 FR 72144 (Nov. 22, 2011).

118. **IT IS FURTHER ORDERED** that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, **SHALL SEND** a copy of this *Second Report and Order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in cursive script, reading "Marlene H. Dortch".

Marlene H. Dortch
Secretary

APPENDIX A

Rules

Part 73 of Title 47 of the U.S. Code of Federal Regulations is amended to read as follows:

PART 73 – RADIO BROADCAST SERVICES

1. The Authority citation for Part 73 continues to read as follows:

AUTHORITY: 47 U.S.C. 154, 303, 307, and 554.

2. Section 73.1212 is amended by deleting “by the licensee” in the second to last sentence of § 73.1212(e) to read as follows:

(e) The announcement required by this section shall, in addition to stating the fact that the broadcast matter was sponsored, paid for or furnished, fully and fairly disclose the true identity of the person or persons, or corporation, committee, association or other unincorporated group, or other entity by whom or on whose behalf such payment is made or promised, or from whom or on whose behalf such services or other valuable consideration is received, or by whom the material or services referred to in paragraph (d) of this section are furnished. Where an agent or other person or entity contracts or otherwise makes arrangements with a station on behalf of another, and such fact is known or by the exercise of reasonable diligence, as specified in paragraph (b) of this section, could be known to the station, the announcement shall disclose the identity of the person or persons or entity on whose behalf such agent is acting instead of the name of such agent. Where the material broadcast is political matter or matter involving the discussion of a controversial issue of public importance and a corporation, committee, association or other unincorporated group, or other entity is paying for or furnishing the broadcast matter, the station shall, in addition to making the announcement required by this section, require that a list of the chief executive officers or members of the executive committee or of the board of directors of the corporation, committee, association or other unincorporated group, or other entity shall be made available for public inspection at the location specified under § 73.3526 of this chapter. If the broadcast is originated by a network, the list may, instead, be retained at the headquarters office of the network or at the location where the originating station maintains its public inspection file under § 73.3526 of this chapter. Such lists shall be kept and made available for a period of two years.

3. Section 73.1943 is amended by adding § 73.1943(d) to read as follows:

§ 73.1943 Political File.

* * * * *

(d) *Location of the file.* A television station licensee or applicant must post all of the contents added to its political file after the effective date of this subsection in the political file component of its public file on the Commission’s website. A television station must retain in its political file maintained at the station, at the location specified in Section 73.3526(b) or 73.3527(b), all material required to be included in the political file and added to the file prior to the effective date of this subsection, . The online political file must be updated in the same manner as subsection (c).

4. Section 73.3526 is amended by revising §§ 73.3526(b) to read as follows:

§ 73.3526 Local public inspection file of commercial stations.

* * * * *

(b) *Location of the file.* The public inspection file shall be located as follows:

(1) For radio licensees, a hard copy of the public inspection file shall be maintained at the main studio of the station. For television licensees, letters and emails from the public, as required by subsection (e)(9) below, shall be maintained at the main studio of the station. An applicant for a new station or change of community shall maintain its file at an accessible place in the proposed community of license or at its proposed main studio.

(2) A television station licensee or applicant shall place the contents required by subsection (e) below of its public inspection file on the Commission's website, with the exception of letters and emails from the public as required by subsection (e)(9) below, which shall be retained at the station in the manner discussed in subsection (b)(1); and the political file as required by subsection (e)(6) below, as discussed in subsection (b)(3). A station must link to the public inspection file hosted on the Commission's website from the home page of its own website, if the station has a website. To the extent this section refers to the local public inspection file, it refers to the public file of an individual station, which is either maintained at the station or on the Commission's website, depending upon where the documents are required to be maintained under the Commission's rules.

(3) A television station licensee or applicant shall place the contents required by subsection (e)(6) below of its political inspection file on the Commission's website. Political inspection file material in existence 30 days after the effective date of this provision shall continue to be retained at the station in the manner discussed in subsection (b)(1) until the end of its retention period. Any station not in the top 50 DMAs, and any station not affiliated with one of the top four broadcast networks, regardless of the size of the market it serves, shall continue to retain the political file at the station in the manner discussed in subsection (b)(1) until July 1, 2014. For these stations, effective July 1, 2014, any new political file material shall be placed on the Commission's website, while the material in the political file as of July 1, 2014, if not placed on the Commission's website, shall continue to be retained at the station in the manner discussed in subsection (b)(1) until the end of its retention period. However, any station that is not required to place its political file on the Commission's website before July 1, 2014 may choose to do so, instead of retaining the political file at the station in the manner discussed in subsection (b)(1).

(4) The Commission will automatically link the following items to the electronic version of all licensee and applicant public inspection files, to the extent that the Commission has these items electronically: authorizations, applications, contour maps; ownership reports and related materials; portions of the Equal Employment Opportunity file held by the Commission; "The Public and Broadcasting"; Letters of Inquiry and other investigative information requests from the Commission, unless otherwise directed by the inquiry itself; Children's television programming reports; and DTV transition education reports. In the event that the online public file does not reflect such required information, the licensee will be responsible for posting such material.

* * * * *

5. Section 73.3527 is amended by revising §§ 73.3527(b) to read as follows:

§ 73.3527 Local public inspection file of noncommercial educational stations.

* * * * *

(b) *Location of the file.* The public inspection file shall be located as follows:

(1) For radio licensees, a hard copy of the public inspection file shall be maintained at the main studio of the station. An applicant for a new station or change of community shall maintain its file at an accessible place in the proposed community of license or at its proposed main studio.

(2) A noncommercial educational television station licensee or applicant shall place the contents of its public inspection file on the Commission's website, with the exception of the political file as required by subsection (e)(5) below, which may be retained at the station in the manner discussed in subsection (b)(1) until July 1, 2014. Effective July 1, 2014, any new political file material shall be placed on the Commission's website, while the material in the political file as of July 1, 2014, if not placed on the Commission's website, shall continue to be retained at the station in the manner discussed in subsection (b)(1) until the end of its retention period. However, any noncommercial educational station that is not required to place its political file on the Commission's website before July 1, 2014 may choose to do so instead of retaining the political file at the station in the manner discussed in subsection (b)(1). A station must link to the public inspection file hosted on the Commission's website from the home page of its own website, if the station has a website.

(3) The Commission will automatically link the following items to the electronic version of all licensee and applicant public inspection files, to the extent that the Commission has these items electronically: contour maps; ownership reports and related materials; portions of the Equal Employment Opportunity file held by the Commission; and "The Public and Broadcasting".

* * * * *

6. Section 73.3580 is amended by revising §§ 73.3580(d)(4)(i) and (ii) to read as follows:

(i) *Pre-filing announcements.* During the period and beginning on the first day of the sixth calendar month prior to the expiration of the license, and continuing to the date on which the application is filed, the following announcement shall be broadcast on the 1st and 16th day of each calendar month. Stations broadcasting primarily in a foreign language should broadcast the announcements in that language.

Radio announcement: On *(date of last renewal grant)* *(Station's call letters)* was granted a license by the Federal Communication Commission to serve the public interest as a public trustee until *(expiration date)*.

Our license will expire on *(date)*. We must file an application for renewal with the FCC *(date four calendar months prior to expiration date)*. When filed, a copy of this application will be available for public inspection during our regular business hours. It contains information concerning this station's performance during the last *(period of time covered by the application)*.

Individuals who wish to advise the FCC of facts relating to our renewal application and to whether this station has operated in the public interest should file comments and petitions with the FCC by *(date first*

day of last full calendar month prior to the month of expiration).

Further information concerning the FCC's broadcast license renewal process is available at (*address of location of the station's public inspection file*) or may be obtained from the FCC, Washington, DC 20554.

Television announcement: On (*date of last renewal grant*) (*Station's call letters*) was granted a license by the Federal Communication Commission to serve the public interest as a public trustee until (*expiration date*).

Our license will expire on (*date*). We must file an application for renewal with the FCC (*date four calendar months prior to expiration date*). When filed, a copy of this application will be available for public inspection at www.fcc.gov. It contains information concerning this station's performance during the last (*period of time covered by the application*).

Individuals who wish to advise the FCC of facts relating to our renewal application and to whether this station has operated in the public interest should file comments and petitions with the FCC by (*date first day of last full calendar month prior to the month of expiration*).

Further information concerning the FCC's broadcast license renewal process is available at (*address of location of the station*) or may be obtained from the FCC, Washington, DC 20554.

* * *

(ii) Post-filing announcements. During the period beginning of the date on which the renewal application is filed to the sixteenth day of the next to last full calendar month prior to the expiration of the license, all applications for renewal of broadcast station licenses shall broadcast the following announcement on the 1st and 16th day of each calendar month. Stations broadcasting primarily in a foreign language should broadcast the announcements in that language.

Television announcement: On (*date of last renewal grant*) (*Station's call letters*) was granted a license by the Federal Communications Commission to serve the public interest as a public trustee until (*expiration date*).

Our license will expire on (*date*). We have filed an application for renewal with the FCC.

A copy of this application is available for public inspection at www.fcc.gov. It contains information concerning this station's performance during the last (*period of time covered by application*).

Individuals who wish to advise the FCC of facts relating to our renewal application and to whether this station has operated in the public interest should file comments and petitions with the FCC by (*date first day of last full calendar month prior to the month of expiration*).

Further information concerning the FCC's broadcast license renewal process is available at (*address of location of the station*) or may be obtained from the FCC, Washington, DC 20554.

Radio announcement: On (*date of last renewal grant*) (*Station's call letters*) was granted a license by the Federal Communications Commission to serve the public interest as a public trustee until (*expiration date*).

Our license will expire on (*date*). We have filed an application for renewal with the FCC.

A copy of this application is available for public inspection during our regular business hours. It contains information concerning this station's performance during the last (*period of time covered by application*).

Individuals who wish to advise the FCC of facts relating to our renewal application and to whether this station has operated in the public interest should file comments and petitions with the FCC by (*date first day of last full calendar month prior to the month of expiration*).

Further information concerning the FCC's broadcast license renewal process is available at (*address of location of the station's public inspection file*) or may be obtained from the FCC, Washington, DC 20554.

APPENDIX B

Final Regulatory Flexibility Act Analysis

1. As required by the Regulatory Flexibility Act ("RFA"),¹ an Initial Regulatory Flexibility Analysis ("IRFA") was incorporated in the *Order on Reconsideration and Further Notice of Proposed Rulemaking (Further Notice)* in MB Docket 00-168.² The Commission sought written public comment on the proposals in the *Further Notice*, including comment on the IRFA.³ We received comments from the North Carolina Association of Broadcasters *et al.* specifically directed toward the IRFA. These comments are discussed below. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

A. Need for, and Objectives of, the Second Report and Order

2. One of a television broadcaster's fundamental public interest obligations is to air programming responsive to the needs and interests of its community of license. Broadcasters are afforded considerable flexibility in how they meet that obligation. Among other things, they are required to maintain a public inspection file, which gives the public access to information about the station's operations.⁴ The goal of this *Second Report and Order* is to modernize this public inspection file requirement, making the public file information more accessible to members of the public who cannot visit a station during business hours to review the public file.

3. The *Second Report and Order* adopts rule changes that will:

- replace the requirement that television stations maintain a paper public file at their main studios with a requirement to submit documents for inclusion in an online public file, including the political file, to be hosted by the Commission;
- reduce the number of documents that television stations would be required to upload to an online public file, by automatically linking to information already collected by the Commission;
- streamline the information required to be kept in the online file, such as by excluding letters and emails from the public; and
- give the online public file a uniform organizational structure to allow consumers to more easily navigate the public files.

B. Legal Basis

4. The proposed action is authorized pursuant to Sections 1, 2, 4(i), 303, and 405 of the Communications Act, 47 U.S.C §§ 151, 152, 154(i), 303, and 405.

¹ See 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601 *et seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

² *FNPRM* at at ¶ 52; *Id.* at Appendix C ¶ 1.

³ *Id.* at ¶ 50.

⁴ *Review of the Commission's Rules regarding the Main Studio Rule and Local Public Inspection Files of Broadcast Television and Radio Stations*, Report and Order, 13 FCC Rcd 15691, ¶ 18 (1998), *recon. granted in part* Memorandum Opinion and Order, 14 FCC Rcd 11113 (1999).

C. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

5. In the IRFA, we stated that our purpose was to ensure that any changes to applicable rules would impose only minimal adverse impact on small entities. We also solicited comments on alternatives to the proposed rules that would minimize the impact that any changes to our rules might have on small entities.⁵ In their comments, North Carolina Association of Broadcasters *et al.* states that the IRFA has not “fully acknowledged, much less actually considered and developed any data to evaluate, the economic impacts of its proposals to require broadcasters to upload their political files to the FCC’s servers and to require broadcasters to report all sponsorship identifications in the online public file.”⁶ The North Carolina Association of Broadcasters *et al.* also states that “the Commission has underestimated the burden of creating, updating, and maintaining these materials”, and has not analyzed the costs to the Commission, which it claims will “undoubtedly” be borne by small businesses via increased regulatory fees.⁷

6. We disagree with these claims. The *FNPRM* and *Second Report and Order*, including the IRFA and this FRFA, consider the impacts of this revised recordkeeping requirement. Section III.B. of the *Second Report and Order* discusses how broadcasters’ initial costs of compliance are minimized, and how the online public file will ultimately lead to cost savings. This section discusses the Commission’s cost analysis, including our determination that broadcaster’s initial costs of compliance to upload their existing public file will average from \$80 to \$400 per station. We understand that North Carolina Association of Broadcasters *et al.* disagrees with our evaluation of the burdens that will be placed upon broadcasters in order to comply with these revised recordkeeping requirements as discussed in the *FNPRM*. Those arguments are considered in this *Second Report and Order*.⁸ We also disagree with North Carolina Association of Broadcasters *et al.*’s assertion that this Regulatory Flexibility Analysis must more fully consider costs to the Commission. We find that such a claim by the Association is based on purely speculative, and therefore spurious, grounds. In making the determinations reflected in the *Second Report and Order*, we have considered the impact of our actions on small entities, which is the requirement of the Regulatory Flexibility Act.⁹ In any event, the Commission is taking steps in this *Second Report and Order* to minimize burdens on small entities, by undertaking the automatic posting of several items that are required to be placed in the online public file, as discussed in Section E, *supra*. In addition, the Commission declined to adopt the proposal that stations report all sponsorship identifications, as discussed by the North Carolina Association of Broadcasters, and shared services agreements, along with weekly on-air announcements. Also, the Commission is providing an exemption from uploading the political file to all stations that are not in the top 50 DMAs and all stations not affiliated with the top four national television broadcast networks, regardless of the size of the market they

⁵ *FNPRM* at Appendix C, ¶ 1.

⁶ North Carolina Assn. of Broadcasters Comments at 21.

⁷ *Id.* at 20-21.

⁸ See, e.g., ¶¶ 30-31 (disagreeing with North Carolina Broadcaster Association *et al.* (“NCAOB”) that transitioning the public file online will require each station to hire one to three employees at an average cost of \$30,000 to \$140,000 per station per year, and instead finding that stations will be able to assign these responsibilities to existing staff, rather than hire additional staff); ¶ 34 (disagreeing with NCAOB that the Commission does not have a sufficient basis to reverse the decision of the 2007 *Report and Order* to exclude the political file from the online requirement); ¶¶ 55-56 (disagreeing with NCAOB that requiring stations to upload the political file online in the same time frame as the existing paper file will be impossible or extremely burdensome); ¶ 64 (agreeing with NCAOB that requiring stations to report the number count of letters received from the public would be overly burdensome); ¶ 92 (agreeing with NCAOB that requiring stations to maintain back-up copies of all public file materials and to make them routinely available directly to the public would reduce the efficiencies of placing the public file online); ¶ 103 (disagreeing that a pilot program is necessary).

⁹ 5 U.S.C. § 603(a) (“Such analysis shall describe the impact of the proposed rule on small entities.”). See also 5 U.S.C. § 604(a).

serve, until July 1, 2014. This will enable small market and non-affiliated broadcasters to have two additional years to familiarize themselves with the online filing requirements before they need to begin uploading their political files on a going-forward basis.

D. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

7. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.¹⁰ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”¹¹ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.¹² A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.¹³ Below, we provide a description of such small entities, as well as an estimate of the number of such small entities, where feasible.

8. *Television Broadcasting.* The SBA defines a television broadcasting station as a small business if such station has no more than \$14.0 million in annual receipts.¹⁴ Business concerns included in this industry are those “primarily engaged in broadcasting images together with sound.”¹⁵ The Commission has estimated the number of licensed commercial television stations to be 1,390.¹⁶ According to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) as of January 31, 2011, 1,006 (or about 78 percent) of an estimated 1,298 commercial television stations¹⁷ in the United States have revenues of \$14 million or less and, thus, qualify as small entities under the SBA definition. The Commission

¹⁰ 5 U.S.C. § 603(b)(3).

¹¹ 5 U.S.C. § 601(6).

¹² 5 U.S.C. § 601(3) (incorporating by reference the definition of “small business concern” in 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.” 5 U.S.C. § 601(3).

¹³ 15 U.S.C. § 632. Application of the statutory criteria of dominance in its field of operation and independence are sometimes difficult to apply in the context of broadcast television. Accordingly, the Commission’s statistical account of television stations may be over-inclusive.

¹⁴ See 13 C.F.R. § 121.201, NAICS Code 515120 (2007).

¹⁵ *Id.* This category description continues, “These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public. These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studios, from an affiliated network, or from external sources.” Separate census categories pertain to businesses primarily engaged in producing programming. See Motion Picture and Video Production, NAICS Code 512110; Motion Picture and Video Distribution, NAICS Code 512120; Teleproduction and Other Post-Production Services, NAICS Code 512191; and Other Motion Picture and Video Industries, NAICS Code 512199.

¹⁶ See News Release, “Broadcast Station Totals as of December 31, 2010,” 2011 WL 484756 (F.C.C.) (dated Feb. 11, 2011) (“*Broadcast Station Totals*”); also available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-304594A1.pdf.

¹⁷ We recognize that this total differs slightly from that contained in *Broadcast Station Totals*, *supra*, note 16; however, we are using BIA’s estimate for purposes of this revenue comparison.

has estimated the number of licensed noncommercial educational (“NCE”) television stations to be 391.¹⁸ We note, however, that, in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations¹⁹ must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. The Commission does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities.

9. In addition, an element of the definition of “small business” is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply do not exclude any television station from the definition of a small business on this basis and are therefore over-inclusive to that extent. Also, as noted, an additional element of the definition of “small business” is that the entity must be independently owned and operated. We note that it is difficult at times to assess these criteria in the context of media entities and our estimates of small businesses to which they apply may be over-inclusive to this extent.

E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

10. The rule changes adopted in the *Second Report and Order* affect reporting, recordkeeping, or other compliance requirements. Television broadcasters are currently required to maintain a copy of their public inspection files at their main studios.²⁰ The *Second Report and Order* requires stations to replace that requirement with a requirement to submit documents for inclusion in an online public file, including the political file, to be hosted on the Commission’s website. Items in the public file that must also be filed with the Commission, including FCC authorizations, applications and related materials, contour maps, ownership reports and related materials, portions of the equal employment opportunity file, the public and broadcasting manual, children’s television programming reports (Form 398), and DTV transition education reports (Form 388), will be automatically imported into the station’s online public file. Television stations will only be responsible for uploading and maintaining items that are not required to be filed with the Commission under any other rule. The *Second Report and Order* also excludes some items from the online public file requirement, such as the existing political file and letters and emails from the public, which will continue to be maintained at the station, and also declines to add other items to the online public file requirement, including sponsorship identifications and shared services agreements, and weekly announcements of the existence of the public file.

F. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

11. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or

¹⁸ See *Broadcast Station Totals*, *supra*, note 16.

¹⁹ “[Business concerns] are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has to power to control both.” 13 C.F.R. § 121.103(a)(1).

²⁰ See 47 C.F.R. §§ 73.3526, 3527.

reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.²¹

12. The *Second Report and Order* seeks to minimize and modernize reporting requirements on all television broadcasters, by having the Commission host the online public file. The previous *Report and Order* in this proceeding, which has been vacated, required stations to host their own public file. Having the Commission host the public file will ease the administrative burdens on all broadcasters. More than one-third of the required contents of the public file already have to be filed with the Commission, and the *Second Report and Order* requires the Commission to import and update that information, creating efficiencies for broadcasters. North Carolina Association of Broadcasters *et al.* note that the estimate for the proportion of the public file that is already filed with the Commission is based on categories of filings, and not the overall amount of paperwork that needs to be filed.²²

13. Given the wide variations of most public files, we are not able to estimate the precise decrease in burdens that each station will undergo by no longer being responsible for placing in the public file items that are already filed by the Commission. But regardless whether the decrease in burdens is measured by category or by overall amount of paperwork, every station will have its burdens reduced by eliminating this duplicative requirement. We also understand that all stations will have an increased burden for the initial transition period from the paper public file to an online public file. We do not believe that this effort will be unduly burdensome on small entities, and we believe that any such burdens are trumped by the increased efficiencies that will result from such a transition.

14. In any event, the *Second Report and Order* does not require any station to upload its existing political files, instead allowing stations to retain such materials at the station until those files expire after their two year retention period. All stations will only be required to upload political file material on a going-forward basis. In addition, the Commission is exempting all stations that are not in the top 50 DMAs and all stations not affiliated with the top four national television broadcast networks, regardless of the size of the market they serve, from having to post new political file materials online until July 1, 2014 from including their political file material in the online public file. After that date, those stations will be required to upload new political file material on a going-forward basis. This will enable non-affiliated broadcasters and smaller market broadcasters to have additional time to familiarize themselves with the online filing requirements before they need to begin uploading their political files.

15. Overall, in proposing rules governing an online public file requirement, we believe that we have appropriately balanced the interests of the public against the interests of the entities who will be subject to the rules, including those that are smaller entities.

G. Federal Rules that May Duplicate, Overlap, or Conflict With the Proposed Rule

16. None.

²¹ 5 U.S.C. § 603(c)(1)-(c)(4).

²² North Carolina Association of Broadcasters *et al.* Comments at 20-21.

**STATEMENT OF
CHAIRMAN JULIUS GENACHOWSKI**

Re: Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations (MM Docket No. 00-168) and Extension of the Filing Requirement for Children's Television Programming Report (FCC Form 398) (MM Docket No. 00-44)

For the past three years, the FCC has been working to harness the power of digital technologies to make public information more accessible to the public.

As part of this effort to promote transparency, we've been transitioning filings and comments and recordkeeping from paper to the Internet – everything from common-carrier tariffs to broadcaster renewal and station modification applications. We stream online all of our Commission meetings, hearings and workshops, and we've developed innovative and informative digital tools like the interactive National Broadband Map and Spectrum Dashboard.

Consistent with this effort, the Commission's Information Needs of Communities report recommended last year moving television broadcaster public files physical filing cabinets to virtual Internet access. These files contain information, for example, about children's programming, equal employment opportunities, and political advertising. Public disclosure of this information is required by law and part of the public's basic contract with broadcasters in exchange for use of the spectrum and other benefits.

The INC report was authored by Steve Waldman, a highly respected former journalist and Internet entrepreneur, and it was widely praised for its thoughtfulness and fair-minded proposals for our changing world.

The Order on which we're voting today implements the INC report recommendation – so that the public file will be accessible not just to people who can trek to broadcasters' studios, but to anyone with Internet access.

In filing supporting comments, the deans of leading journalism schools describe this as: "representing in a specific instance the overall spirit of the current FCC, which has not chosen to try to reinstitute strict regulation of broadcasting content, but, instead, has strongly promoted the use of the Internet to give citizens access to information."

Editorial writers have called our proposal "an excellent idea". I call it common sense.

It fulfills the core intent of the public file rules: to provide the public access to the information in the "public file".

It not only enhances transparency and informs the public; it also drives efficiency and cost-savings, since our Order would allow broadcasters to shift completely from paper to digital.

But despite broad support for this proposal, it has been met with an evolving series of critiques from opponents of online disclosure.

First, we were told that the public file is already readily available; no need to change a thing. But when FCC staff went to Baltimore to experience what the public experiences, they found that it took 61

hours to retrieve information from the public files at eight stations, and they were quoted copying costs of close to \$1,700.

The next argument was that moving public file information online would be technically infeasible. That's a hard argument to sustain when businesses are routinely digitizing their papers and systems, and indeed in other contexts urging the FCC to move to electronic filings.

Another objection was burden and cost. But the record reveals the unsurprising fact that businesses, including broadcasters, are moving from paper to digital every day. And our staff's cost-benefit analysis demonstrates that the claimed costs and burdens were dramatically overstated.

Indeed, while there will be very modest transition costs, once the transition is complete it will save money for broadcasters.

Meanwhile, the broad public benefits of transparency and disclosure are substantial.

Once it became clear that the proposed reforms would make public information much more accessible, that it can be done easily, and in a way that ultimately saves money, opponents of the proposal focused on the political file. They asked that the Commission exclude the political file from the general obligation of online disclosure.

That does acknowledge that an important question here is not: why include political files in online disclosure, but rather: why adopt a special exemption from disclosure for political file?

Proponents of this special exception offered a few arguments for this. First, that information about political spending should be handled exclusively by the FEC. But this is contrary to the plain language of the law.

In the Bipartisan Campaign Reform Act of 2002, Congress explicitly amended the Communications Act to require broadcasters to make the "political record ... available for public inspection," and the Act states that "the Commission" – the Federal Communications Commission – "shall prescribe appropriate rules and regulations" to implement the political record provision. This was largely codified by rules the FCC already had in place. The FCC's role here is clear, essential, and longstanding.

That brings us to the latest objection – that online disclosure would cause commercial harm. Opponents have argued that the rates broadcasters charge for political advertising are commercially sensitive and should, in effect, be censored from the public file as it appears online. But, one, Congress explicitly requires broadcasters to disclose this information to the public; two, broadcasters already do; and three, competitors and customers already have access to this information and are already reviewing it where they have an economic incentive to do so.

The argumentation here perhaps is not a surprise. After the Bipartisan Campaign Reform Act became law in 2002, the National Association of Broadcasters and others sued to invalidate the political file provisions. They fought it to the Supreme Court, and they lost.

The Supreme Court in that case explicitly rejected all of the largely similar arguments. On the burden and cost-benefit argument, for example, the Supreme Court described the annual costs of the political file provisions overall as "a few hundred dollars at most," calling that "a microscopic amount compared to the many millions of dollars of revenue broadcasters receive from candidates who wish to advertise".

The Supreme Court also said the political file requirements “will help make the public aware of how much money candidates may be prepared to spend on broadcast messages.”

Thus the Supreme Court has confirmed that an important purpose of the political file requirement was informing the public, not just candidates.

And in last year’s *Citizen United* case, the Supreme Court said that the Internet enhances the accountability benefits of disclosure requirements.

Others have looked at the arguments of opponents of online disclosure and found them wanting. Bloomberg View analyzed the burden and jobs arguments and concluded that “neither is credible.” The New Republic examined the position of the opponents of political file disclosure and concluded: “the arguments they offer are so flimsy they collapse on inspection.”

Late last Friday, a group of broadcasters submitted a proposal.

They described it as a compromise. But stakeholders who had argued for online disclosure did not support the new proposal.

The key feature of that proposal, and others that were offered in recent days, was to censor from online access information that Congress explicitly required to be made public.

Somewhat ironically, the proposal would also be significantly more burdensome on broadcasters than the plan that opponents had earlier said was too burdensome – because it would require both the maintenance of paper files *and* the submission of separate newly created information.

Our staff carefully analyzed this proposal and other proposals made, and concluded that they were not workable.

Now, I recognize that some leaders in the broadcasting industry agree that moving files online makes sense, and I appreciate the efforts by some to forge a solution that could have broad support inside and outside the industry. I particularly appreciate the efforts of a small group of broadcasters and their representatives who have been working on this valiantly since we started working on the INC report. Similarly, members of the journalism and public interest communities have also worked hard to identify mechanisms to even better inform the public.

As technologies advance and markets evolve, I look forward to engaging with all stakeholders on ways to harness technology to ensure that the goals of the public file provisions of the Communications Act are met effectively and efficiently in the 21st century.

Today, we have before us a straightforward issue.

In 2002, Congress required that certain specified information be made available to the public, and it did so because of the public benefits that flow from transparency. The statute specifically says *all* the information in the political file must be made “available for public inspection.”

The question in front of us is whether, in the 21st Century, “available for public inspection” means stuck in office filing cabinets, or available online.

Or as one person put it: "Who can be against mom, apple pie and the American way of transparency?"

I thank my colleagues for their input, and I thank Commission staff who have worked so hard on this item. In particular, I want to thank Sherrese Smith in my office, whose outstanding leadership, policy and legal skills, and energetic resolve were essential to today's Order. I'd also like to thank Bill Lake, Holly Saurer, and the Media Bureau staff who have done a tremendous job on this item.

**STATEMENT OF
COMMISSIONER ROBERT M. McDOWELL
APPROVING IN PART, DISSENTING IN PART**

Re: Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations (MM Docket No. 00-168) and Extension of the Filing Requirement for Children's Television Programming Report (FCC Form 398) (MM Docket No. 00-44)

Today the Commission is taking steps to advance the laudable goals of transparency and modernization. And I agree with those goals. But before I go further, it is important for all of us to understand the historical context of how we got here.

For decades, the Commission has required broadcasters to maintain general files for public inspection that contain information regarding many aspects of broadcasters' operations that speak to whether a broadcaster is serving its local community of license. The Commission has also required broadcasters to maintain files containing information regarding political advertisements. The general public inspection file and the political file have separate histories and purposes, however.

In 1938, the Commission required broadcasters to afford equal opportunities and uniform pricing to candidates for the same office. In the ensuing years, the Commission emphasized that the main purpose of the political ad pricing rule was for the benefit of *candidates*. Nearly 30 years later, the Commission decided that the political file containing the pricing information for candidates should be added to the local public inspection file essentially because the political file did not have any other designated place for storage. Next, in 1972, Congress took the Commission's rules a step further and mandated that candidates were entitled to the cheapest rates for campaign ads. Subsequently, in 2002, through the McCain-Feingold campaign finance law, Congress codified essentially what the Commission had put in place decades earlier. Interestingly, Congress chose not to require the political file to be posted online, even though the paper world was rapidly moving to the Internet the year McCain-Feingold passed.

Prior to McCain-Feingold, however, *broadcasters* asked the FCC to allow them to move their public inspection files online. Broadcasters felt that modernizing the public file disclosure requirement by moving the information online would enhance transparency and save money. At the same time, broadcasters were very concerned about moving the political ad file online for several reasons, but especially because those files contain competitively sensitive information regarding the rates charged for television ads.

To make a long story short, in 2007, I and all four of my fellow Commissioners at that time *unanimously* voted to move almost all sections of broadcasters' general public inspection files online while explicitly exempting the political file from that transition. All of us recognized the unique history and practical realities of the political file requirement and how those contrasted with the history and intent of the general public inspection file rule. We also recognized the competitive sensitivities and burdens of placing pricing information online. In the end, on a bi-partisan basis and without dissent, the Commission re-emphasized that the public inspection file contains material that speaks to whether a broadcaster is serving its local community of license while the political file exists to serve political candidates. Accordingly, we chose to treat them differently for good reason.

So here we are today with this draft order before us. I cannot join my colleagues in the majority in mandating that TV broadcasters post sensitive pricing information, contained in the political file, online. This is not common sense. There is no statutory requirement that the Commission place any of this information, either in whole or in part, on the Internet. Similarly, there is no prohibition against placing a subset of this information online while maintaining the commercially-sensitive information at

the station for the use of candidates, campaigns, and other political ad buyers. After all, the political file is a tool for examining transparency in campaign spending rather than broadcaster behavior.

The record in this proceeding contains ample evidence that posting rate information online may cause market distortions, including price signaling, which could lead to rates mysteriously rising in some markets, or other unforeseen consequences in other cases. Put another way, imagine for a moment if antitrust authorities learned that broadcasters were sharing pricing information market-by-market. Undoubtedly, broadcasters would be sued for antitrust violations. The majority appears to discount the adverse effect that potential anticompetitive pricing activity could have on everyday consumers. By forcing broadcasters to do what would otherwise be illegal is simply surreal.

Either way, it is the notion of disclosing competitively sensitive rate information that has broadcasters of all sizes most concerned. With this in mind, I offered a compromise proposal whereby we would require most aspects of the political file to be posted online, but carve out the lowest unit rate information from the rule. In the meantime, we would explore new ideas for the treatment of the rate information in a further notice, which we would conclude quickly. Although my colleagues politely considered this idea, apparently I was insufficiently persuasive. The same holds true for the good faith compromise proposals put forth by broadcasters.

Ironically, in an attempt to move away from paper, the majority may run into the requirements of the Paperwork Reduction Act (PRA). Our 2007 order on this matter never went into effect due to PRA concerns. As the mandates in today's order require the duplication of some information already required by the Federal Election Commission, it may also mark time in PRA Purgatory.

Furthermore, additional study of the matter regarding the lowest unit rate would help the Commission conduct a proper cost/benefit analysis, which is lacking here. One would think that moving from paper to online would always be more cost effective. Surprisingly, however, evidence in the record suggests that the new rule might *not* be more efficient than the old rule and, in fact, could add up to tens of thousands of dollars a year in new costs for some broadcasters due to the requirement that fresh advertising information be uploaded "immediately." During one of the busiest seasons for broadcasters, station personnel would have to be diverted from other vital tasks to take up the full-time job of uploading information to a government website. Such scenarios almost always add costs. The majority seems to recognize this reality by adopting a phase-in provision which, of course, underscores the flaw in its original premise that the new rule should be less expensive to administer.

In any case, whether it is now or at the end of the phase-in period, all TV broadcasters may well have to swallow larger costs. This unfunded mandate will harm smaller broadcasters the most, and those owned by minorities and women will not be spared. While the Commission often opines on its desire for more diversity of ownership in the broadcast market, all too often it seems to make it harder for such small and disadvantaged businesses to succeed by heaping more regulations on their backs. Indeed, without a *bona fide* cost/benefit analysis, which also takes into account the effects of potential anticompetitive behavior, the majority cannot be sure if it is doing more harm to the public interest than good. Furthermore, the majority is violating the letter and the spirit of President Obama's 2011 executive order titled *Improving Regulation and Regulatory Review*.

I fully support transparency in political campaign spending. As many have noted, I have a mantra that says, "I don't tell Congress what to do, Congress tells me what to do." In this case, many Members of Congress have asked me what Congress should do. If the concern is to know where campaign money is going, the public interest might be better served if Congress were to focus its scrutiny on the *spenders* of campaign dollars rather than just one of many, many, many *recipients*. Today's rule applies only to TV broadcasters, yet campaign money flows to radio, cable TV, satellite radio and TV, newspapers, direct

mail, outdoor ads and the Internet, not to mention companies that offer other ways to reach voters. What the government has created is a regime of disparate treatment. Congress should fix what the FCC won't or can't.

Nonetheless, today, I vote with my colleagues to approve of common sense modernization of our public inspection file disclosure requirements. But I cannot join them in the aspects of the Order requiring broadcasters to post sensitive pricing information, contained in the political file, online. Nor can I support aspects of the Order that may needlessly raise costs. I am disappointed that my colleagues would not agree to a prudent and modest compromise, so I have no choice but to approve in part and dissent in part.

I thank the Chairman and Commissioner Clyburn for their willingness to engage in an open dialogue throughout this process. And many thanks to the Bureau for its work on this matter, even if I disagree with much of the outcome.

SUPPLEMENTAL POLICY AND LEGAL STATEMENT

Transparency and modernization are always laudable public policy goals. By placing the majority of the public inspection file online, we will increase accessibility to these documents, thus improving communications between broadcasters and their local communities. Moreover, I support providing broadcasters with a more cost-effective means to comply with the Commission's rules. Currently, our rules require the public inspection file to contain a series of documents, including authorizations, applications, ownership reports, and information regarding broadcasters' programming of local interest, hiring practices, service areas, and investigations and complaints.¹ Today, we act to reduce the current burden on broadcasters by requiring them to upload only those documents maintained in the public file that are solely in their possession. I approve of this aspect of today's decision.

I must dissent, however, to the requirement that the contents of the political file be placed online. The political file, maintained with the rest of the public file, contains information for candidates seeking to purchase political ads and sheds light on the spending patterns of campaigns, political committees, and third-party groups.² Unlike other parts of the public inspection file, the political file does not reveal broadcaster behavior, *i.e.*, whether a broadcaster is serving its local community of license,³ which instead is a tool for examining campaign spending. Although the pursuit for transparency can be a positive endeavor, political advertising and speech bring many factual, legal and pragmatic complexities.⁴ As discussed below, placing the political file online will harm American consumers because diverting resources to fulfill the online requirement will negatively affect newsgathering operations, local programming offerings, and may chill political speech.

By way of background, the "political file" was first created in 1938 when the Commission required that broadcasters afford equal opportunities and uniform pricing to candidates for the same office.⁵ Subsequently, the Commission recognized that the main purpose of the rule was to benefit candidates.⁶ In 1965, the Commission decided that the political file should be placed with the public

¹ See 47 C.F.R. §§ 73.3526, 73.3527.

² See *Id.* §§ 73.1943, 73.3526(e)(6), 73.3527(e)(5); Bipartisan Campaign Reform Act of 2002 § 504, 47 U.S.C. § 315(e) (2002) (codifying the Commission's rules and requiring broadcaster disclosure of political issue ads, by expanding the criteria to purchases of broadcast time "relating to any political matter of national importance."

³ Compare New Section 0.418 and Amendment of Sections 0.417 (formerly in 0.406), 1.580 (formerly 1.359), and 1.594 (formerly in 1.362) of the Commission's Rules Relating to Inspection of Records, to Pre-Grant Procedures, and to Local Notice of Filing or of Designation for Hearing of Broadcast Applications, *Report and Order*, 4 R.R. 2d 1664, 1667-68 ¶ 11-12 (1965) ("1965 Public Inspection File Order") (citing Commission Policy on Programming, *Report and Statement of Policy Re: Commission En Banc Programming Inquiry*, 20 R.R. 1901, 1912 (1960) (stating that a broadcaster's public interest obligation "consists of a diligent, positive and continuing effort by the licensee to discover and fulfill the tastes, needs and desires of his service area.")), with 3 Fed. Reg. 1691 (1938).

⁴ It is worth noting that the Supreme Court reiterated in *Citizens United* that political speech is core protected speech under the First Amendment; therefore, as a threshold matter, the government's ability to regulate in this area is severely curtailed. *Citizens United v. Fed. Election Comm'n*, 130 S. Ct. 876 (2010) (prohibiting the government from limiting communications spending for political purposes by corporations and unions). As a consequence, administrative agencies and Congress alike should think carefully before imposing new laws and regulations that could be construed by the Court as *de facto*, or "backdoor," inhibitions on political speech.

⁵ 3 Fed. Reg. 1691, 1692 (1938).

⁶ Commission orders noted the importance of the political file information to candidates, but were silent on the interest of such information to the general public. See, e.g., Amendment of Sections 3.120, 3.290, 3.590, and 3.657 (continued....)

inspection file at the relevant station, because “[n]o place of retention for such records is specified in [the political file rule] sections.”⁷ Later, in 1972, Congress mandated that candidates receive the lowest unit charge for advertising to place candidates on par with a broadcast station’s most-favored advertisers.⁸

The discussion regarding whether to place the public inspection file online commenced in a 1999 notice,⁹ followed by a 2000 notice of proposed rule making, which tentatively concluded that the public inspection file should be posted on a broadcaster’s or its state broadcasters association’s website.¹⁰ Neither notice sought comment specifically on the political file.

In 2007, the Commission unanimously adopted an online requirement for the public inspection file; however, the agency explicitly exempted the political file finding that the burden of placing this material on the Internet outweighed the benefits.¹¹ Further, no Commissioner issued statements expressing any dismay about this exclusion.¹² In its discussion of the political file, the Commission recognized that:

Daily and even more frequent requests for access by political candidates and their campaign personnel, combined with a need for the station to update the file

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of the Commission’s Rules – Equal Opportunities Under Sec. 315, Communications Act, *Order*, 40 F.C.C. 1082 (1959) (“[I]nterpretations and interpretive opinions require clarification and supplementation in order that candidates for public office and broadcast licensees may be more fully informed as to their rights and obligations under section 315 and the rules and in order to insure the orderly and expeditious disposition of requests submitted to such licensees and to the Commission for ‘equal opportunities’ under said section of the Act and under said rules.”); Codification of the Commission’s Political Programming Policies, *Report and Order*, 7 FCC Rcd 678, 698 ¶¶ 123-24 (stating that “[w]e believe that our current rule 73.1940(d) adequately addresses the political file requirements and that continuation of our existing policies will best serve the interests of both candidates and broadcasters” and that information regarding the disposition of requests “is necessary to determine whether a station is affording equal opportunities and whether the candidate is getting favorable or unfavorable treatment in the placement of spots. . . .”). Other Commission orders recognize that candidates and their representatives are the most likely to use political file, not the general public. See, e.g., Review of the Commission’s Rules Regarding the Main Studio and Local Public Inspection Files of Broadcast Television and Radio Stations, MM Docket No. 97-138, *Memorandum Opinion and Order*, 14 FCC Rcd 11113, 11122 ¶ 22 (1999) (stating that, in exempting the political file from requirements to make portions of the public inspection file available by mail upon telephone request, “[s]ince candidates or their representatives, rather than the general public, are the persons most likely to be effected by this exemption, we do not believe that the exemption will adversely affect the public interest.”).

⁷ 1965 *Public Inspection File Order*, 4 R.R. 2d at 1672 ¶ 25.

⁸ Federal Election Campaign Act of 1971, Pub. L. No. 92-225, 86 Stat. 3 (1972).

⁹ Public Interest Obligations of TV Broadcast Licensees, MM Docket No. 99-360, *Notice of Inquiry*, 14 FCC Rcd 12633, 21641 ¶ 17 (1999).

¹⁰ Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations, MM Docket No. 00-168, *Notice of Proposed Rule Making*, 15 FCC Rcd 19816, 19816, 19829 ¶¶ 2, 31 (2000).

¹¹ Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations, MM Docket Nos. 00-168, 00-44, *Report and Order*, 23 FCC Rcd 1274, 1283 ¶ 20 (2008) (“2007 Order”). The 2007 order never went into effect because of challenges before the Commission, the courts and the Office of Management and Budget where the information collection was questioned under the Paperwork Reduction Act.

¹² See *id.* at 1316-23. I dissented in part to the order because of the adoption of the enhanced disclosure and the 60-day implementation deadline to place the required postings online. See *id.* at 1322-23.

frequently, may make requiring the station to place this material on the Internet inappropriate. *Resources available to political candidates likely provide them with greater access to the station and distinguish them from members of the general public who will benefit from ready access to Internet posting of other parts of the public file.* Political candidates and campaigns make heavy use of the file and require quick access to material, and if the volume of material is too great, the station may not be able to update the Internet file quickly enough. Our rules currently require that records be placed in the political file as soon as possible, which the rule defines as meaning “immediately absent unusual circumstances.” This may mean multiple updates each day during peak periods of the election season.¹³

Today, the majority is reversing a unanimous decision exempting the political file from online display with no empirical evidence that its 2007 findings are no longer accurate.

The majority states that a new approach is warranted because the Commission’s understanding of how stations manage their political transactions have changed since 2007 and that additional technological advances have occurred.¹⁴ Many in the broadcast industry, however, argue that very little has changed in the political ad purchase process since that time.¹⁵

One commenter conducted a survey of broadcasters, which demonstrated that “85% of the survey respondents reported no changes to their political advertising methodology and practices since 2007.”¹⁶ Many broadcasters sell political time by non-automated processes, such as telephone conversations, handwritten forms, emails, and faxes.¹⁷ In fact, the record states that “[o]ne of the most successful and profitable stations providing a survey response, a station with significant local news, public affairs and program production, reported using handwritten documents for approximately 90% of its political file.”¹⁸ The record also reflects that, even if a broadcaster issues electronic invoices, the political file includes additional information that is in paper format.¹⁹ Even assuming that the processes have changed,

¹³ See 2007 Order, 23 FCC Rcd at 1282 ¶ 20 (emphasis added).

¹⁴ Order at 17 ¶ 34. The 2010 further notice provides more insight into thinking of the majority: “Since exempting the political file in 2007, we have learned that the vast majority of television stations handle political advertising transactions electronically, through e-mails and a variety of software applications. As a result, requiring them to make this information publicly available online appears to impose far less of a burden than previously thought.” Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations, MM Docket No. 00-168, *Order on Reconsideration and Further Notice of Proposed Rulemaking*, 26 FCC Rcd 15788, 15800 ¶ 23.

¹⁵ See, e.g., Named State Broadcasters Association, Joint Comments, at 6 (Dec. 22, 2011) (“Named State Broadcasters Comments”); Joint Broadcasters, Reply Comments, at 5 (Jan. 17, 2012) (“Joint Broadcasters Reply”); The North Carolina Association of Broadcasters, The Ohio Association of Broadcasters and The Virginia Associations of Broadcasters, Joint Comments, at ii, 9 (Dec. 22, 2011) (“North Carolina, Ohio, and Virginia Association of Broadcasters Comments”).

¹⁶ North Carolina, Ohio, and Virginia Association of Broadcasters Comments at 9.

¹⁷ *Id.*; National Association of Broadcasters, Reply Comments, at 8-9 (Jan. 17, 2012) (“NAB Reply”); Joint Broadcasters Reply at 5.

¹⁸ North Carolina, Ohio, and Virginia Association of Broadcasters Comments at 9.

¹⁹ Joint TV Broadcasters, Joint Comments, at 4 (Dec. 22, 2011) (stating “stations include in their political files: (i) the NAB PB-17 form or an equivalent record, which is not transmitted through the online traffic system, and is necessary because it includes required information including a summary of each request, the disposition and the
(continued....)

however, this is irrelevant because the Commission based its 2007 decision on the burdens resulting from the volume of material and the frequency of updates.²⁰

By placing this information online, the majority requires broadcasters to widely disseminate proprietary and competitively-sensitive rate information. Though some say this action will shed light on the political spending process, the unintended consequence could be to encourage price signaling and other anticompetitive behavior. Imagine the government's response if sales executives from competing television stations gathering in a conference room were to share such information.²¹ Regarding price signaling, the record indicates that "[r]eadily available political file information would give television stations a convenient and completely legal way to act with 'conscious parallelism' to put a floor under rates during election seasons."²² Another party tells us that "a central and anonymously accessible file would create market distortions and place broadcasters at a disadvantage vis-à-vis their competitors . . . if competitors attempt to use the data in the file to undercut their rates."²³ For example, one commenter states that "[this] rule would afford a significant intelligence advantage to one side in private commercial negotiations. . . . One poker player would, in effect, have had at least partial glance at the other's hand."²⁴ Given these alarming scenarios, the Commission should have issued a further notice of proposed rulemaking to ask specific questions about and consider the possibilities of such anticompetitive activity and market distortions.

Further, the Commission is also inequitably singling out television broadcasters for these disclosure requirements even though political campaigns spend money on a plethora of outlets to contact and influence voters including, but certainly not limited to, advertising expenditures on radio, newspapers, the Internet, cable television, satellite radio and TV. Requiring the political file to be online

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names of a candidate's committee's officers; (ii) the order form; and (iii) one or more related invoices."); NAB Comments at 17-18 ("While it may be true that many broadcasters handle much of their advertising sales electronically, including political ad sales, the electronic sales invoices do not include, or are not designed to include, all the necessary information required to be included in the political file. That information is often input, sometimes electronically, and sometimes in handwritten form, before it is coupled with a sales invoice and included in the political file.").

²⁰ See 2007 Order, 23 FCC Rcd at 1282 ¶ 20.

²¹ See CBS Corporation, ABC Television Stations, Fox Television Stations, Inc., NBC Owned Television Stations and Telemundo Stations, and Univision Television Group, Inc., Reply Comments, at 13 ("Network Station Owners Reply").

²² *Id.* at 14.

²³ National Association of Broadcasters, Comments, at 21-22 (Dec. 22, 2011); see also Network Station Owners Reply at 12-13 ("Requiring that the entire political file be placed online... would make sensitive price information available to a television station's customers and competitors at the click of a mouse. This proprietary information would be available to commercial as well as political advertisers, to other local stations, and to competing advertising media such as cable operators, newspapers and web sites."); The North Carolina Association of Broadcasters, The Ohio Association of Broadcasters and The Virginia Associations of Broadcasters, Joint Reply, at 8 (Jan. 17, 2012) ("North Carolina, Ohio, and Virginia Association of Broadcasters Reply") ("The market for political time is, of course, competitive. And requiring television broadcasters, but not their competitors to post . . . information regarding advertising rates will impact the market for political time. . . ."); Joint Broadcasters Reply at 15 (requiring television stations to make rate and purchase information available online could create "market distortions" that favor other media.).

²⁴ Network Station Owners Reply at 13-14.